

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

AMERICAN BOTTOM CONSERVANCY,	)	
	)	
Plaintiff,	)	
	)	Civil Action No.
v.	)	
	)	
UNITED STATES ARMY CORPS OF	)	
ENGINEERS,	)	
Defendant.	)	
_____	)	

**COMPLAINT  
FOR DECLARATORY AND INJUNCTIVE RELIEF**

1. Plaintiff American Bottom Conservancy (“ABC”), by and through legal counsel, brings this action against Defendant United States Army Corps of Engineers (“Corps”) seeking injunctive and other appropriate relief to compel compliance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.

JURISDICTION and VENUE

2. This court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1346, and 5 U.S.C. § 552(a)(4)(B).
3. Venue is proper in the Eastern District of Missouri pursuant to 28 U.S.C. § 1391 and 5 U.S.C. § 552(a)(4)(B).

PARTIES

4. Plaintiff ABC is a not-for-profit organization established to promote the preservation of the environment of the East St. Louis metro area by collecting and disseminating information

regarding environmental issues to the public. ABC engages in environmental advocacy and, when necessary, litigation.

5. ABC has requested documents from the Corps relating to the proposed Southwestern Illinois Levee Improvement Project (“SILIP”) and deficiencies identified in the Metro East Sanitary District (“MESD”) levee system.
6. These above mentioned interests of ABC, and the interests of its members, have been and will continue to be adversely affected by the Corps’ failure to comply with FOIA.
7. Defendant United States Army Corps of Engineers is an agency of the United States within the meaning of 5 U.S.C. § 552(f)(1). Its principal office is located in Washington, D.C.

FIRST CAUSE OF ACTION:

CORPS’ FAILURE TO ACT ON MARCH 2012 FOIA APPEAL

8. ABC herein re-alleges and incorporates by reference paragraphs 1-7.
9. ABC, through counsel, submitted a FOIA request to the Corps’ St. Louis District Office (“District Office”) on September 27, 2011.
10. This September 27, 2011 FOIA request sought documentation of deficiencies identified in the MESD levee system.
11. 5 U.S.C. § 552(a)(6)(A)(i) states that an agency shall respond to a FOIA request within twenty weekdays of receiving the request, not including public holidays.
12. The Corps did not respond within twenty weekdays of receiving the request.
13. ABC, through counsel, emailed the District Office on November 10, 2011 to explain that the deadline had passed and request a prompt response.
14. The Corps did not respond to the November 10, 2011 email.
15. ABC, through counsel, then submitted a follow-up letter on November 28, 2011, explaining again that the statutory deadline had passed and requesting a prompt response.
16. The Corps did not respond to the November 28, 2011 letter.

17. ABC, through counsel, submitted a second letter on January 20, 2012, again explaining that the statutory deadline had passed and requesting a prompt response.
18. The Corps finally responded to ABC's September 2011 FOIA request on January 25, 2012 in a letter partially denying the request.
19. On March 26, 2012, ABC, through counsel, timely submitted its appeal of the January 25, 2012 partial denial, pursuant to 5 U.S.C. § 552(a)(6)(A).
20. 5 U.S.C. § 552(a)(6)(A)(ii) states that an agency shall make a determination with respect to a FOIA appeal within twenty weekdays of receiving the appeal, not including public holidays.
21. The Corps did not make a determination within twenty weekdays of receiving the March 26, 2012 appeal.
22. ABC, through counsel, submitted a letter to the Corps on June 5, 2012, explaining that the statutory deadline had passed and requesting immediate action.
23. The Corps did not respond to the June 5, 2012 letter.
24. As of the filing of this suit, the Corps has failed to make a determination with respect to ABC's March 26, 2012 appeal.
25. The Corps' failure to make a determination with respect to ABC's March 26, 2012 appeal violates 5 U.S.C. § 552(a)(6)(A)(ii).

SECOND CAUSE OF ACTION:

CORPS' FAILURE TO RESPOND TO FEBRUARY 2012 FOIA REQUEST

26. Plaintiff herein re-alleges and incorporates by reference paragraphs 1-25.
27. ABC, through counsel, submitted a separate FOIA request to the District Office on February 8, 2012.
28. This February 8, 2012 FOIA request sought various documents related to the SILIP proposal for improving the MESD levee system.
29. The Corps did not respond within twenty weekdays of receiving the February 8, 2012 request.

30. ABC, through counsel, submitted a letter to the Corps on April 4, 2012, explaining that the statutory deadline had passed and requesting a prompt response.
31. The Corps did not respond to the April 4, 2012 letter.
32. ABC, through counsel, submitted a second letter to the Corps on August 13, 2012, again requesting a prompt response.
33. The Corps also failed to respond to the August 13, 2012 letter.
34. As of the filing of this suit, the Corps has failed to respond to the February 8, 2012 FOIA request.
35. The Corps' failure to respond to the February 8, 2012 FOIA request violates 5 U.S.C. § 552(a)(6)(A)(i).

PRAYER FOR RELIEF

WHEREFORE, ABC respectfully requests that this Court:

- (a) declare that the Corps has violated 5 U.S.C. § 552(a)(6)(A)(ii) by failing to make a determination with respect to ABC's March 26, 2012 FOIA appeal;
- (b) order the Corps to make a determination immediately with respect to ABC's March 26, 2012 FOIA appeal;
- (c) declare that the Corps has violated 5 U.S.C. § 552(a)(6)(A)(i) by failing to respond to ABC's February 8, 2012 FOIA request;
- (d) order the Corps to respond immediately to ABC's February 8, 2012 FOIA request;
- (e) award ABC its reasonable costs and attorneys' fees pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (f) grant such other relief as the Court deems proper and just.

DATED October 4, 2012.

Respectfully submitted,

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(Motion Pending for Student Authorization  
under Local Rule 12.05)

Counsel for Plaintiff ABC